

Minutes from non-point workgroup meeting of November 29, 2006

The meeting was held at the Piedmont Regional Office in Glen Allen, Virginia and commenced at 9:30 AM. The following persons were in attendance:

Brent Fults	Earth Source Solutions/Chesapeake Bay Nutrient Land Trust
Scott Reed	Earth Source Solutions/Chesapeake Bay Nutrient Land Trust
Shannon Varner	Troutman Sanders
Cliff Randall	Virginia Tech
Katie Frazier	Virginia Agribusiness Council
Sharon Conner	Hanover-Caroline SWCD
Russ Baxter	DCR
Mindy Selman	World Resources Institute
John Sheehan	Aqualaw
Allan Brockenbrough	DEQ
Russ Perkinson	DCR
Bill Street	James River Association
Ed Overton	VASWCD
Mike Gerel	Chesapeake Bay Foundation
Kyle Winter	DEQ
Al Pollock	DEQ
Al Christopher	Virginia Clean Cities

Kyle Winter opened the meeting by listing the meeting agenda items. After briefly recapping the minutes from the November 7th meeting, Mr. Winter discussed the action items from the meeting and outlined the steps the workgroup would be taking over the next several months.

The first “focus group” meeting will be held on the evening of December 7th; a draft of the outreach materials (an informational flyer, a summary of the regulatory requirements –in plain English- and a list of possible questions about the process) was distributed to the workgroup for review and comment.

Mr. Winter will be networking with agricultural producers in Southside Virginia to set up a second meeting in December; a third meeting (in the Shenandoah Valley) is still under consideration.

DCR is working on nutrient removal rates for land conversion practices; in response to a question, DCR reaffirmed that the efficiency rates used with the agricultural BMPs were taken from the Chesapeake Bay model. Several new practices are being evaluated by the Chesapeake Bay Program and the efficiency rates for these practices may be incorporated into the appendices to this guidance.

A meeting held by DEQ, DCR and several representatives of the agricultural community had revisited the question of how owners or operators of large tracts of land might be able to participate in the trading program on a limited basis without bringing BMP implementation on the entire contiguously owned or operated property up to the baseline. For example, an owner of 8000 contiguous acres might be able to afford the improvements that would generate tradable reductions on 2000 acres, but could not afford to achieve the baseline on all 8000 acres at one time.

One suggestion to address this was for each field that could be discretely identified by a tract number, would be evaluated for baseline attainment independently; a perceived drawback to this approach was that there might be an incentive for an owner or operator to focus conservation efforts on a limited percentage of land under his control while allowing other tracts to be neglected or used for less environmentally-friendly purposes. Several work group members commented that in many cases, nothing currently prevents such management, but allowing

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an owner or operator to “get his feet wet” with a limited percentage of acres might provide an incentive (or the means) to implement practices across more of the land holdings as time went on.

It was agreed that this should be added to the discussion topics in the focus group meetings.

Other questions addressed:

- how to determine when the incentive contract on an installed BMP had lapsed (typically a nominal “life” of the BMP);
- how “baseline” would be determined for a facility such as a manure holding tank (would depend on what regulations the operation is subject to and other site-specific conditions; some protocol will need to be developed for the review of these proposals);
- how cost-share would be related to installed BMPs for the purpose of generating offsets; if a farmer paid 75% of the cost to install a BMP, would he be entitled to 75% of the pounds reduced above baseline, or would the “baseline” be defined as the more stringent of cost-share or tributary strategy requirements? It was mentioned that in a previous workgroup meeting, the “baseline” might be the most stringent of several different requirements (grant/cost-share, tributary strategy, CBPA etc.);
- do permitted and unpermitted facilities need to be subject to different requirements?

The handouts for the focus group meeting were discussed at length; the FAQ sheet was recommended for agricultural agents, with a shorter document targeted toward promoting the program with farmers. Several changes were suggested for the FAQ sheet; Mr. Winter requested that any additional suggestions be provided by week’s end so that the handouts could be provided in advance of the focus group meeting to the participants.

It was suggested that a case study also be provided to the focus group; whether this was provided as an additional handout or would be simply talked through will be determined before the meeting.

A lengthy discussion followed on whether new developers should be eligible to generate offsets; the following issues were raised:

- As a number of regulations (including the currently-under-revision storm water regulations) govern new construction, there’s a question about how stringent the baseline already is for this activity;
- Some developers are willing to assume that responsibility, and without the ability to generate offsets, there’s little incentive for them to go beyond that (potentially stringent) baseline;
- Who generates the offset (is responsible for maintaining the BMP) once the properties within the development project are sold? How would inspections of these BMPs be performed?
- Is it necessary (or even appropriate) to subject localities and (re)developers to differing baseline requirements for developed land BMPs?

Other questions were raised about the role of third parties acting on behalf of the landowners:

What relationship does the Nutrient Credit Exchange Association with new and expanded dischargers? The ExChange was authorized by the same legislation that directed DEQ to develop the nutrient trading program and consists of facilities registered under the watershed general permit. It should be noted that one option for new

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and expanding facilities is to purchase a waste load allocation (literally, buying part of the permit limit) from a significant discharger, and the ExChange would be the logical agent to effect that purchase, should the trading parties choose to involve it. As the registration for the WGP is currently underway, DEQ cannot predict if (and so, how many) significant dischargers are yet prepared to commit in advance to voluntarily operating under reduced load caps; in fact, several facilities who have called DEQ with questions about registration have specifically ruled this out in the short term. As the ExChange is currently working with significant dischargers on the compliance plan to be submitted by August 1, 2007, and is working out the mechanism by which compliance credits (as opposed to offsets) will be traded, DEQ does not expect the ExChange to take a proactive role with new and expanding non-significant dischargers at this time.

How will aggregators/agents/banks/cooperatives be screened/authorized? The enabling legislation did not establish any criteria for the regulation of a “public or private entity acting on behalf of the land owner”, but it should be noted that VPDES permittees are familiar with contracting work to laboratories, contract operators and engineers, and are expected to exercise due diligence when selecting a source for nutrient offsets. Nonetheless, there should be some credible and enforceable way to evaluate the offsets held by an aggregator or bank, and DEQ is working on guidance to address nutrient offset banks.

The group agreed to meet at least twice more before subjecting the guidance to public notice and comment. The meetings were tentatively scheduled for Friday, January 19, 2007 and Friday, February 16, 2007. The January meeting will focus on synthesizing information gathered at the focus group meetings with ongoing edits to the guidance; the February meeting will focus on preparing the draft for public comment.

The meeting was adjourned at 1:00 PM.